

Rainbow Tours, Inc., d/b/a Rainbow Coaches and Hawaii Teamsters and Allied Workers, Local 996, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Ronald Sai, and Garret Wong. Cases 37-CA-1341, 37-CA-1342, and 37-CA-1387

March 28, 1983

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On March 29, 1979, the Board issued a Decision and Order¹ against the Respondent in which the Board ordered the Respondent, *inter alia*, to make whole certain of its employees for any losses resulting from the Respondent's unfair labor practices. On October 29, 1980, the United States Court of Appeals for the Ninth Circuit entered its judgment enforcing in full the Board's Order. A controversy having arisen over the backpay owed discriminatees Simeon (Jay) Agao, Michael Akamine, Miles Fonseca, Yukio (Ross) Iho, G. Lane Kaaiai, Eric Kama, Ralph Kauai, James Louis, Ronald Sai, and Henry Sanford, the Regional Director for Region 20, on September 30, 1982, issued and caused to be served on the parties a backpay specification and notice of hearing alleging the amount of backpay due the individual discriminatees. Subsequently, on October 14, 1982, the Respondent filed an answer generally denying each allegation of the specification, asserting that the General Counsel failed to take into account the seasonal nature of the business and setting forth certain affirmative defenses that relate in part to alleged interim earnings.

On December 1, 1982, the General Counsel filed with the Board a Motion for Partial Summary Judgment. Thereafter, on December 14, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's motion should not be granted. On January 10, 1983, the Respondent filed a response to the Notice To Show Cause and an amended answer. Subsequently, the General Counsel filed a "Motion to Strike Respondent's First Amended Answer and To Find Backpay Specification True and Motion for Partial Summary Judgment."

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.54(b) of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

(b) *Contents of the answer to specification.*—The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the post office address of the respondent. The respondent shall specifically admit, deny, or explain each and every allegation of specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification denied. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, he shall specifically state the basis for his disagreement, setting forth in detail his position as to the applicable premises and furnishing the appropriate supporting figures.

In the original answer to the backpay specification, the Respondent offered a general denial to each of the allegations of the backpay specification. In his Motion for Partial Summary Judgment, the General Counsel asserts that the Respondent's answer constituted a general denial that the method and elements involved in the Regional Director's gross backpay computations are correct, that the Respondent's answer failed to set forth any alternative formula or figures for any of the gross backpay computations or elements involved therein as required by Section 102.54(b) of the Board's Rules and Regulations, and that such elements are specifically within the knowledge of the Respondent. The General Counsel therefore contends that the allegations in the backpay specification, except as to interim earnings, should be deemed admitted as true and that summary judgment should be granted as to the computation of gross backpay.

In its response to the Notice To Show Cause and in its amended answer, the Respondent repeated its

¹ 241 NLRB 589.

denial of the allegations of the backpay specification. The Respondent, however, also set forth specific alternative gross backpay figures with respect to discriminatees Agao, Fonseca, Iho, Kama, Louis, and Sai. Although the amended answer filed with the Board was not sworn to by the Respondent or by a duly authorized agent of the Respondent, copies of the same amended answer filed on February 7, 1983, bore the necessary oaths.²

The Board has held that, even in the absence of an amended backpay specification, a respondent may amend its answer prior to a hearing in the matter.³ The Respondent's amended answer generally denies the allegations of the specification with respect to discriminatees Akamine, Kaaiai, Kauai, and Sanford without setting forth the alternative formulas or figures required by Section 102.54(b). The Respondent did provide alternative gross backpay figures as to discriminatees Agao, Fonseca, Iho, Kama, Louis, and Sai. We find that the Respondent's amended answer with respect to the amount of gross backpay owed these six discriminatees is sufficient to raise an issue of fact which can best be resolved in a hearing. Accordingly, we shall grant the General Counsel's motion for Par-

tial Summary Judgment only with respect to the specification's allegations as to the amount of gross backpay due discriminatees Akamine, Kaaiai, Kauai, and Sanford. We further find that Respondent's general denial is sufficient to place interim earnings into issue for all discriminatees because that information is generally not within the knowledge of the Respondent.⁴

ORDER

It is hereby ordered that the General Counsel's Motion for Partial Summary Judgment as to gross backpay computations is hereby granted only with respect to gross backpay computations for Michael Akamine, G. Lane Kaaiai, Ralph Kauai, and Henry Sanford.⁵

IT IS FURTHER ORDERED that this proceeding be, and it hereby is, remanded to the Regional Director for Region 20, for the purpose, if necessary, of arranging and giving notice of a hearing before an administrative law judge, at which hearing the issues shall be limited to determining the gross backpay due discriminatees Simeon (Jay) Agao, Miles Fonseca, Yukio (Ross) Iho, Eric Kama, James Louis, and Ronald Sai, and the interim earnings of all of the discriminatees.

² Accordingly, we deny as lacking in merit the General Counsel's motion to strike Respondent's first amended answer.

³ *E. A. Fuller Bentleys, Inc. d/b/a Bentleys Lounge, et al.*, 265 NLRB 632 (1982); and *Standard Materials, Inc.*, 252 NLRB 679 (1980).

⁴ *Dews Construction Corp., a subsidiary of The Aspin Group, Inc.*, 246 NLRB 945 (1979).

⁵ We deny also as without merit the Respondent's request for factual information and its application for leave to take depositions.